

From: MARSHALL MOORE
To: Microsoft ATR
Date: 1/14/02 10:53pm
Subject: MICROSOFT SETTLEMENT...

Dear Judge:

I am a member of the high tech community here in Virginia - and am also a lawyer. Although I do not practice antitrust law, I have had the opportunity to research the PFJ which you are now charged to review. It appears to me that there are a number of VERY serious issues with the PFJ, including:

- a. No Penalty For Undisputed Illegal Activity. Microsoft is not penalized for any past misdeeds. In other words, they are being allowed to retain all the profits gained from their illegal activities. Every court involved with this case has acknowledged that Microsoft broke the Anti-trust laws. Through this Agreement, the Justice Department is sending the message that this sort of anticompetitive behavior is acceptable. Every large potential monopolistic company is being told that they can get away with this sort of illegal behavior without fear of losing any of the gains made from such conduct. In other words, get away with as much as you can until the Justice Department brings an action. There is every incentive for future monopolists to engage in this type of conduct and no incentive not to.
- b. Middleware: As part of the Agreement Microsoft is required to allow the PC manufacturers to hide Microsoft middleware programs and allow them to install icons or links to competing middleware programs. The only problem is that the PC manufacturers are not allowed to remove the code that could be used to reactivate Microsoft's middleware programs. In other words, two weeks into owning the machine, a consumer could be asked if they want to reconfigure their desktop, install all the Microsoft middleware and delete all the competitor's middleware.
- c. Communication Protocols: The Agreement states that Microsoft must now share information on how its middleware and server software work together with Windows. However, Microsoft does not have to disclose this information for middleware it does not distribute separate from windows, or for middleware it has not trademarked. This is a huge loophole, because if Microsoft wants to drive a competitor out of business, they just attach the specific type of software the competitor is involved with to their Windows platform. Once they do that, they do not have to share the coding information that allows the competitors software to work with Windows, thus driving the competitor out of business. Once the competitor is out of business, Microsoft can separate the software from the Windows package, sell it separately and derive huge margins. In addition, Microsoft does not have to disclose their information to companies that in "their view" do not have a "viable business". This loophole will allow Microsoft to prevent new software start-ups from forming which, to say the least, is very bad for competition, and therefore, the consumer.

Judge, I know that you will be looking at these matters closely. I trust that you will do the right thing for ALL Americans, software producers and consumers alike, and remedy these very serious problems in the PFJ.

Thank you for your time.

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